IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2517 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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SOMABHAI MOKAMBHAI RATHOD - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR NK MAJMUDAR, for Appellant(s) : 1,
MR RC KODEKAR, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 12/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. In pursuance of receipt of an application

sent by the accused-Somabhai Mokambhai Rathod through Jail Authorities by the Registry of this Court, it has been numbered as Criminal Appeal No.2517 of 2005 and handed over to learned counsel, Mr.N.K.Majmudar to represent the appellant in appeal.

2. By the present appeal, the appellant challenges the judgment and order of conviction dated 11-10-2005 passed by the learned Presiding Officer, Fast Track Court No.3, Bharuch, whereby he was sentenced to suffer life imprisonment upto last breath of his life with a fine of Rs.5,000/-, in default, to suffer S.I. for one more year for the offence under Sec.302 of IPC.

3. It is the case of the prosecution that on 8-11-2004, when PSI, Mr.G.D.Palsana of Dahej Police Station, was on duty, he received an anonymous telephone call informing about a murder which had taken place in Ambetha Village. He, therefore, with other police personnel went to Ambetha, visited the scene

of offence and as widow of the deceased Bachubhai Bakorbhai Rathod was willing to file complaint, it was recorded by him vide Ex.31 for the offence under Sec.302 of IPC and Sec.135 of Bombay Police Act and with a report, it was sent for registering the offence at Dahej Police Station where it was registered as Dahej Police Station C.R.No.50 of 2004. The said complaint was sent to PSI, Palsana for further investigation. Mr.Palsana started investigation. Firstly he sent yadi to Executive Magistrate for inquest panchnama and it was prepared at Ex.7 in presence of panchas. Thereafter, he made arrangements to send dead body of the deceased along with Police Constable to Civil Hospital, Bharuch, for post mortem along with yadi to doctor and thereafter, he drew panchnama of scene of offence Ex.13 and also collected muddamal as shown in the panchnama from the place of offence. He thereafter recorded statements of witnesses and also started searching accused. During

that period, as Police Constable Ranjibhai produced cloth of the deceased, it was seized by drawing panchnama Ex.14. Meanwhile, he arrested the accused on 9-11-2004 by drawing panchnama Ex.22 to that effect. He also seized tea shirt and pants wore by the accused having blood stains in presence of panchas and panchnama to that effect Exs.20 and 21 was drawn. Since the accused showed willingness to produce weapon axe used in the commission of offence, he called the panchas and prepared preliminary panchnama and thereafter they followed the accused in a Government vehicle as directed by him. The accused on reaching the place took out the axe which he had hidden in the dig and panchnama under Sec.27 of the Indian Evidence Act was drawn at Ex.25. He thereafter sent all muddamal to FSL by way of forwarding letter Ex.55. Receipt Ex.5 issued by FSL was kept in file and on arrival of post mortem report and cause of death certificate Ex.34 and 35 respectively,

same were kept in file. Further investigation was transferred to PSI, Mr.Gadhvi who submitted the charge sheet against the appellant into the Court.

4. As the case against the accused was triable exclusively by the Court of Sessions, learned J.M.F.C. committed the case into the Court of Sessions, Bharuch, where it was numbered as Sessions Case No.56 of 2005 and handed over to learned Presiding Officer, Fast Track Court No.3, Bharuch, who, framed charge against the accused at Ex.3. The accused pleaded not guilty to the charge and prayed for trial.

5. To prove the charge against the accused, the prosecution examined in all 16 witnesses namely, P.W.No.1, Trikambhai Narottambhai Parmar, panch witness of inquest panchnama and eye witness Ex.6; P.W.No.2 Jitsing Nathubhai Gohil, panch witness Ex.8; P.W.No.3 Ganpatbhai Umedbhai Gohil, panch witness Ex.14; P.W.No.4 Himmatsinh Vajesinh

Parmar, panch witness Ex.19; P.W.No.5 Amarsing Kabhai Makwana, panch witness Ex.23; P.W.No.6 Madhuben Bachubhai Rathod, the complainant and widow of the deceased Ex.26; P.W.No.7 Natubhai Dahyabhai, the witness Ex.30; P.W.No.8, Dr.Jyotiben Ashokumar Medical Officer Ex.32; P.W.No.9, Haresh Kumar Hiralal, Circle Officer, Ex.38; P.W.No.10, Arjunbhai Bachubhai Rathod, eye witness to the incident Ex.41; P.W.No.11, Jayendrasinh Muljibava, eye witness Ex.42; P.W.No.12 Mohansinh Vijaysinh Gohil, Police witness Ex.43; P.W.No.13, Ravjibhai Dhanabhai Ahir, Police witness Ex.48; P.W.No.14 Rakeshkumar Bapulal, witness Ex.52; P.W.No.15 Gautambhai D. Palsana, investigating officer working at the relevant time as PSI of Dahej Police Station Ex.54 and P.W.No.16 Maheshbhai V.Gadhvi, PSI who carried out further investigation Ex.60. Prosecution also relied upon various documentary evidence namely,

complaint Ex.29; panchnama of scene of offence Ex.13; discovery panchnama Ex.25; inquest panchnama Ex.7; panchnama of clothes wore by the deceased Ex.18; arrest panchnama of accused Ex.22; police yadi for post mortem of dead body Ex.33; post mortem report Ex.34; certificate of cause of death Ex.35; receipt of FSL Ex.3; form of dying declaration Ex.37; letter of PSI forwarded to Mamlatdar Ex.39; map of place of offence Ex.40; certified copy of station diary Ex.44; yadi for drawing inquest panchnama Ex.45; copy of station diary Ex.46; panchnama of clothes of deceased Ex.47; copy of order of Addl. Dist Magistrate Ex.53; forwarding letter dispatching muddamal Ex.55; office copy of forwarding letter Ex.56; order of PSI to admit the offence Ex.57; copy of wireless message Ex.58; receipt of FSL Ex.59 and FSL report Ex.61. The accused did not chose to enter into the witness box nor did he examine any witness.

On submission of closing purshis by the prosecution, the learned Sessions Judge recorded the further statement of the accused under Sec.313 of the Code of Criminal Procedure. The learned Presiding Officer, Fast Track Court No.3, Bharuch, after giving opportunity of hearing to the learned advocates appearing for the parties, convicted the original accused vide aforesaid judgment and order whereby he was sentenced to suffer life imprisonment upto last breath of his life with a fine of Rs.5,000/-, in default, to suffer S.I. for one more year for the offence under Sec.302 of IPC which is giving rise to the present appeal.

6. When the appeal came up for admission, original case papers of the matter were also placed by the office. As the learned counsel for the appellant is also having copy of evidence and other record, he argued the matter on the basis of papers placed by the

office with the appeal and also on the basis of original record of the case provided by this court. Learned APP, Mr.R.C.Kodekar, also argued on behalf of the respondent-State.

7. Learned counsel for the respective parties mainly relied upon oral evidence of the following witnesses namely, P.W.No.1, Trikambhai Narottambhai Parmar, panch witness of inquest panchnama and eye witness Ex.6; P.W.No.10, Arjunbhai Bachubhai Rathod, eye witness to the incident Ex.41 as well as P.W.No.11, Jayendrasinh Muljibava, eye witness Ex.42. They also relied upon the evidence of P.W.No.8, Dr.Jyotiben Ashokkumar, Medical Officer, Bharuch Ex.32, the doctor who performed the post mortem on the body of deceased together with the post mortem report Ex.34; Madhuben Bachubhai Rathod P.W.No.6 Ex.26, the widow of the deceased, who gave the complaint Ex.29 at the earliest and who is not an eye witness

of incident; investigating officer, Palsana, P.W.No.15 Ex.54, the person who recorded the complaint of the complainant and completed most of the investigation as well as Ex.61, FSL report along with panchnama of scene of offence Ex.13, discovery panchnama Ex.25 and also the reasoned judgment.

8. Prosecution Witness No.10, Arjunbhai Bachubhai Rathod, who is the witness of incident and who has been examined at Ex.41, categorically deposed in his examination-in-chief regarding details of the incident. He deposed that when his father was passing on the road, accused who hid himself in the babul tree came from behind and gave axe blows on the backside of his father and was continuously inflicting blows on him as a result of that, head of the deceased was removed from his trunk. He thereafter took head of the deceased and put it at a distance. Since he and others frightened because of this incident, they could not

come forward to rescue the deceased. Meanwhile, accused ran away from the scene of offence with axe. He narrated the motive behind the gruesome murder in para 3 of his deposition. Though he was thoroughly cross examined by learned advocate of the accused, nothing came out shaking his evidence.

9. Similarly, Prosecution Witness No.11, Jayendrasinh Muljibava Solanki, who was examined vide Ex.42 and who is the another eye witness to the incident deposed that at the time of incident, he was passing near the bus-stand when he saw the accused Soma Mokam Rathod assaulting his own uncle with axe firstly on the head and thereafter on shoulder, backside, neck and jaw. He continued giving blows till head of the deceased was removed from his trunk. Not only that, he took the head and placed it at a distance. Since the incident was so furious, he could not be able to rescue the

deceased. He is also the person in whose presence panchnama of scene of offence has been prepared.

10. Both the aforesaid witnesses identified the accused into the Court. They deposed that they were knowing each other as they belong to the same Village. P.W.No.10 stated that accused is his cousin brother and was staying along with them in their house. As the incident took place in broad day light, the question of misidentification does not arise at all. Discovery panchnama Ex.25 of muddamal axe voluntarily produced by the accused which he hid at a place known to him alone and which bears bloodstains also supports the say of the prosecution. It also gets support from FSL report Ex.61 wherein it has been categorically opined by the expert analyst that human blood of AB Group of the deceased was found on the muddamal article axe.

11. It is an incident which had taken place in

broad day light wherein motive has also been established. It is to be noted that the deceased was the real uncle of the appellant accused and was taking care of the accused. However, as he was not doing anything but was wasting his time and energy in consuming country made liquor, obviously the person who is keeping his nephew with him would wish good of him and, therefore, as the accused was not improving, he was driven out by the deceased. Keeping this vengeance in mind, the accused hid himself in the babul tree waiting for the arrival of Bachubhai and when Bachubhai was passing on the road, he suddenly came out with deadly weapon axe and gave various blows on the head, neck and shoulder of the deceased. Since he was not satisfied with that, he gave continuous blows removing the head of the deceased from his trunk and put it at a distance and thereafter left the scene of offence along with the weapon and hid the weapon. Later on

he was arrested and the weapon discovered by drawing panchnama under Sec.27 of the Indian Evidence Act was proved by the prosecution. Even motive was also proved. Both the eye witnesses support the say of the prosecution in toto. Out of the two eye witnesses, one eye witness P.W.No.11 is an independent eye witness and there is nothing coming out from his cross examination and hence, there is no reason to disbelieve his say. Over and above, prosecution also gets support from other oral as well as documentary evidence which we have dealt with more particularly the discovery panchnama of weapon axe along with the evidence of panchas, FSL report to the effect of clothes, weapon and other muddamal and also post mortem note as well as evidence of doctor who performed the post mortem which proved the case of the prosecution in toto. It is also required to be noted that the appellant has not denied the fact that death of the deceased is a

homicidal death. Not only that, prosecution is able to prove the same by way of evidence on record and, therefore, we are not discussing further in the matter to that effect. Apart from the above, there are two eye witnesses who are the witnesses of incident of which, as we have discussed above, one is the independent eye witness. As stated above, incident has taken place in broad day light at a public place and the witnesses and accused are known to each other and hence, there is no question of misidentification of the accused.

12. In view of the aforesaid facts and circumstances, we are of the opinion that case against the appellant accused of committing gruesome murder of the deceased has been proved by the prosecution beyond reasonable doubt and, therefore, conviction awarded by the learned Presiding Officer, Fast Track Court No.3, Bharuch, by the judgment and order is just, legal and proper

and does not require to be interfered with.

13. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

> "....This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

14. In view of the above, this appeal is required to be dismissed.

15. The appeal is accordingly dismissed.

(R.P.DHOLAKIA,J.)

(S.D.DAVE,J.)

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